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JUN 04 2010

In re Application of
Noriya Hayashi et al.
Application No. 10/588,331
Filed: August 31, 2007
Attorney Docket No: MTU.0022US (1392-US)

OFFICE OF PETITIONS

ON PETITION

This is a decision on the Petition to Revive the above identified application under 37 CFR 1.137(b).¹

The petition to revive under 37 CFR 1.137(b) is **DISMISSED** as involving moot issues.

After the mailing of the Notice of Allowance and the Notice of Allowability on March 1, 2010, which set a three month period for reply, the instant response in the form of a Request for Continued Examination with an amendment as submission required under 37 CFR 1.114 was filed.

Petitioners are advised that the instant application is not abandoned and furthermore, the filing of an RCE is not a substitute for paying the issue fee.

As petitioners have not stated a cause of action for which relief can be granted, no further action is required in this matter.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).